

SPECIES ELECTION

In the Office action, the Examiner set forth a species election in which the Applicants are required to elect 1) a species of phosphorylated lipophilic pharmaceutically acceptable compound; 2) a species of complexing agent, and 3) a species of the resulting complex. Office action at 2-3.

Applicants hereby elect:

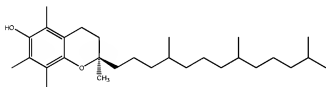
- 1) Phosphorylated lipophilic pharmaceutically acceptable compounds – tocopherol;
- 2) Complexing agent – lauryliminodipropionic acid; and
- 3) Resulting complex – lauryliminodipropionic acid tocopherol monophosphate.

Claims 1, 4-19 and 26 read on the elected species. Claim 1 is generic. Applicants note that “upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise require all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.” See, Office action at 3.

Additionally, without providing any authority, the Examiner states “Applicant is required to include the chemical structure as well as the generic and chemical name for each elected species.” Office action at 3. Applicants are not aware of any such requirement, and have found no reference of such requirement in the MPEP. Accordingly, Applicants hereby reserve the right to challenge the propriety of the Examiner's requirement.

Nevertheless, in order to advance prosecution, Applicants, to the best of their knowledge, submit examples of structures and chemical names for the elected species, which in no way should be construed as limiting.

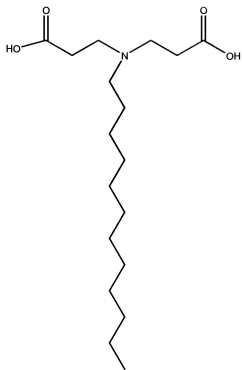
Species 1) tocopherol



Common name: tocopherol

Chemical name: (2R)-2,5,7,8-tetramethyl-2-[(4R,8R)-(4',8',12'-trimethyltridecyl)]chroman-6-ol

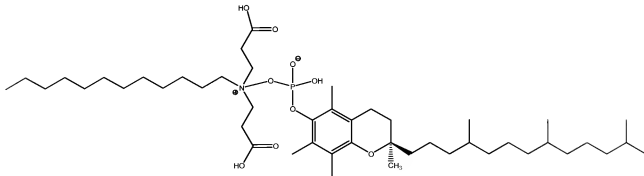
Species 2) lauryliminodipropionic acid



Common name: lauryl imino dipropionic acid or laurylaminodipropionic acid

Chemical name: 3,3'-(dodecylimino)dipropionic acid

Species 3) lauryliminodipropionic acid tocopheryl monophosphate



Common name: lauryliminodipropionic acid tocopheryl monophosphate complex

Chemical name: (2R)-2,5,7,8-tetramethyl-2-[(4R,8R)-(4',8',12'-trimethyltridecyl)]-6-ester-phosphate 3,3'-(dodecylimino)dipropionic acid

CONCLUSION

Favorable consideration of the present application is respectfully requested. If a telephone discussion would be useful in resolving issues arising from the filing of this communication, please contact the undersigned at the number below.

Respectfully submitted,

/brian d. bean/

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File No. 024944-9010 US00

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